

This letter discusses the requirements for Certificates of Resale. 86 Ill. Adm. Code 130.1405.
(This is a GIL.)

June 3, 2008

Dear Xxxxx:

This letter is in response to your letter dated December 17, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This is a request for a General Information Letter with regard to use of the Multi-State Tax Commission (MTC) Exemption Certificate form. This request is on behalf of a Parent Company and Subsidiary with d/b/a locations in Illinois. The request is part of a multi-state project to receive approval for exemption certificate procedures implemented at the Parent level using the standard MTC form.

The Parent Company and Subsidiaries operate Motor Vehicle (M.V.) auctions at several locations in various states. Each d/b/a location and/or entity engages in M.V. sales at auction wherein all sales are for resale. The Selling Dealer is disclosed to the Purchasing Dealer at the time of the sale. Admittance to the auction and participation in the auction is limited to pre-registered dealers who have submitted documents proving that they are licensed as a M.V. dealer. Members of the public are not admitted to the auction. Security officials are in place to ensure that admittance to the premises by unauthorized persons is not allowed during the auction. No dealer may participate in or purchase at an auction unless it provides proper identification and is registered within the centralized registration system.

The dealer registration system is centralized for all corporations through the common Parent Company and registration documents are available electronically to all subsidiaries and d/b/a locations of the Parent. Once registered with the Parent

Company, the dealer may purchase vehicles for resale at any auction owned by the Parent Company.

The Parent Company owns 100% of Subsidiary A which operates multiple locations each under a DBA name. As a result of the centralized registration system maintained with Parent Company, the customer may purchase M.V.s for resale from:

- any DBA location operated by Subsidiary A;
- any DBA location operated by any other subsidiary of Parent Company.

Purchasing Dealer issues a MTC Exemption Certificate form in lieu of CRT-61. The Purchasing Dealer lists 'Parent Corporation and Subsidiaries' as the seller on the MTC Exemption Certificate form. The form is provided to Parent Company and is electronically available to all subsidiaries and all d/b/as.

Under 86 Ill. Adm. Code 130.210(c), failure to present a resale certificate creates a presumption that a sale is for resale which may be rebutted by other evidence that all of the seller's sales are sales for resale.

Question 1) Do the auction company's operating procedures provide sufficient 'other evidence' referred to in 86 Ill. Adm. Code 130.210(c) to rebut the presumption of taxability of all of its sales at auction which are open only to registered M.V. dealers so that a Resale Exemption Certificate is not required from each Purchasing Dealer?

If the answer to question 1 is no, please answer the following questions.

Question 2) Will Illinois regard the MTC Exemption Certificate form issued to 'Parent Corporation and Subsidiaries' as a valid resale certificate, accepted in good faith, for purchases at any Illinois business location of Parent Company or its subsidiaries?

Question 3) Will Illinois regard the MTC Exemption Certificate form issued to 'Subsidiary A' as a valid resale certificate, accepted in good faith, for purchases at any Illinois business location of Subsidiary A?

Question 4) If the Purchasing Dealer is located out-of-state and purchases the vehicles for resale out-of-state to non-Illinois buyers, will Illinois accept the MTC Exemption Certificate with the notation on the MTC Exemption Certificate form's IL line that it 'makes no sales in IL'?

This is a multi-state initiative to establish clear operational procedures as part of a centralized registration system. The state of California has advised that it will accept the MTC Exemption Certificate as described above. While we don't expect California's acceptance to provide guidance in other states, we are hopeful that uniform procedures may be established between the largest states, including California and Illinois. If it is anticipated that the answer to each of these questions is 'no,' please call me to discuss further prior to issuing a response to this inquiry.

Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

We are unable to provide you with the specific response you request in the context of a General Information Letter. Provided below is information that we hope you find helpful regarding your exemption/resale certificate.

For general information regarding resale certificates, the Department's regulation for resale certificates, "Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale," is found at 86 Ill. Adm. Code 130.1405. If an electronic resale certificate is kept, it should contain all of the information required under 86 Ill. Adm. Code 130.1405.

A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to out-of-State Purchaser.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (*i.e.*, it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. The risk run by companies in accepting such a certification and the risk run by purchasers in providing such a certification is that an Illinois auditor is more likely to go behind a certificate of resale that does not contain a signature and require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

In regards to the signature requirement, a digital signature may be acceptable. As explained above, the law allows the Department to look at other evidence in determining the sufficiency of a certificate of resale.

Enclosed is a copy of 86 Ill. Adm. Code 130.1915 ("Auctioneers and Agents"). When auctioneers or agents are involved in selling activities, the person who is liable for Retailers' Occupation Tax will depend on whether the auctioneer or agent is working on behalf of a disclosed or undisclosed principal. This rule applies to consignment transactions, as well. An auctioneer or agent

acting on behalf of an unknown or undisclosed principal is considered to be the owner of the tangible personal property that will be sold and is responsible for paying Retailers' Occupation Tax on the gross receipts from the sale, as well as filing a sales tax return.

However, if the auctioneer or agent is acting on behalf of a known or disclosed principal, the sale of the tangible personal property is taxable to the principal and not the auctioneer or agent. A principal is deemed to be disclosed to a purchaser for use or consumption only when the name and address of such principal is made known to such purchaser at or before the time of the sale and when the name and address of the principal appears upon the books and records of the auctioneer or agent. See subsection (b) of Section 130.1915. Please be advised, however, that if the tangible personal property sold would constitute an occasional sale by the disclosed principal, then the sale is not taxable. See 86 Ill. Adm. Code 130.110 ("Occasional Sales"). If tax is due, it is based upon the total selling price, including any commission.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
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